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Identical notes verbales dated 8 January 2016 from the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General and the President of the Security Council

The Permanent Mission of Cuba to the United Nations presents its compliments to the Secretary-General and the President of the Security Council and has the honour to transmit herewith the views of Cuba regarding the Arria formula meeting of the Security Council on the responsibility to protect and non-State actors, held on 14 December 2015 (see annex).

The Permanent Mission of Cuba requests that the present note verbale and its annex be circulated as a document of the Security Council.

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Views of Cuba regarding the Arria formula meeting of the Security Council on the responsibility to protect and non-State actors, held on 14 December 2015

Issues related to the topic of "the responsibility to protect" are considered by the General Assembly. Cuba believes that the General Assembly is the only organ of the United Nations that allows for transparent, inclusive discussions, in which the positions and legitimate concerns of all Member States on a topic that has implications for all are given due consideration.

The issue of the responsibility to protect continues to raise serious doubts for many countries, particularly small, developing States, owing to the lack of consensus and of definitions regarding various aspects of a concept that is susceptible to being manipulated for political reasons.

Before applying the concept of the responsibility to protect, it is crucial that the General Assembly reach a consensus on its scope and implications, resolve differences of interpretation, guarantee its universal recognition and acceptance and lend legitimacy to the actions proposed for its implementation.

The international consensus on this issue is limited to paragraphs 138 and 139 of General Assembly resolution 60/1, entitled "2005 World Summit Outcome". It is incorrect to argue that the principle of the responsibility to protect was adopted in that document. That "responsibility" is not a principle; rather, it is a concept whose characteristics, rules of application and evaluation mechanisms are far from established or agreed. The aforementioned resolution recognizes only the responsibility of each State to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity; and that the international community should encourage and help States to exercise that responsibility.

The crimes listed in paragraphs 138 and 139 of General Assembly resolution 60/1 are acts that every State should prevent, repress and repudiate, whether they are committed in the context of internal armed conflicts in developing countries or, as has happened in the recent past, by the occupying forces, law enforcement agencies or military forces of developed countries. This balance, which can exist only in a less selective world and a more democratic United Nations, is far from today's reality.

International efforts to prevent those crimes must serve to strengthen the purposes and principles of the Charter of the United Nations and international law, in particular sovereign equality, territorial integrity and self-determination. However, the ambiguities inherent in the concept of the responsibility to protect and in the implications of implementing its "three pillars" run counter to such purposes and principles. Therefore, the pre-eminence of the principles of voluntary acceptance, prior request and consent by States regarding the responsibility to protect should be recognized.

Furthermore, some would seek to extend the scope of the responsibility to protect to situations that are not included in the 2005 World Summit Outcome. It

must be stressed that the concept refers solely to acts of genocide, war crimes, ethnic cleansing and crimes against humanity.

Ambiguous terms that were not included in the 2005 Outcome or in the minimal consensus on the responsibility to protect have also been put forward. Such is the case with the terms "atrocity crimes", "risk factors" and "imminent risks", which have yet to be clarified and agreed by the mechanisms and offices of the United Nations that are responsible for their definition and classification.

Another cause for concern is the lack of clarity with regard to who decides when there is a need to protect; who determines that a State is failing to protect its population; who determines the action to be taken, and on the basis of what criteria; and how to prevent the issue from being used for the purposes of intervention. It is also not clear how to ensure that the consent of the concerned State is obtained when taking action, so as to avoid the use of the issue to justify a supposed and non-existent "right to intervene".

It is unacceptable that organs such as the Security Council be granted functions that were not attributed to them. It is similarly unacceptable to reinterpret the concept of collective security endorsed in the Charter of the United Nations, which was conceived of only in the context of threats to international peace and security, in order to protect the State against external attack.

Many who enthusiastically defend the expansion of the concept of the responsibility to protect, even without consensus, do not promote with the same conviction the urgent need to examine and tackle the root causes of situations, such as underdevelopment and poverty, nor do they address the systemic problems that trigger conflict, often leading to extreme situations.

It is therefore worrying that the measures proposed for preventing and reducing the risk of crimes against humanity focus on political rights and basic freedoms, while disregarding the valuable contribution of initiatives aimed at promoting economic, social and cultural rights, as well as third-generation rights, such as the right to development.

It is a noble cause to strive to ensure that the international community does not remain impassive to genocide, war crimes, ethnic cleansing and crimes against humanity. Nevertheless, in many cases, the promotion of the responsibility to protect is a disguised attempt to appropriate yet another tool for facilitating interference in domestic affairs, agendas involving regime change and subversion against third countries, most of them small and developing.